

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

MERCEDES-BENZ OF PEMBROKE PINES¹

Employer

and

Case 12-RC-9290

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Mercedes-Benz of Pembroke Pines (the Employer) operates a dealership for new and used cars in Pembroke Pines, Florida.² On November 29, 2007, the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) filed a petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act), seeking to represent a unit of service technicians (including team leaders)³ and trainees.⁴ The Employer contends that an appropriate unit must also include service advisors, bookers,

¹ The name of the Employer appears as amended at the hearing.

² The parties stipulated that the Employer, a Delaware corporation with a place of business located at 14199 Pines Boulevard, Pembroke Pines, Florida, is engaged in the sales, leasing and service of new and pre-owned vehicles, and that during the past 12 months, it has derived gross revenues exceeding \$500,000, and has purchased and received at its Pembroke Pines, Florida facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

³ During the hearing, the parties stipulated that there are four service technician team leaders, all of whom belong in any unit found appropriate herein. There are no other employees whom the Employer designates as "team leaders."

⁴ The unit as set forth in the petition is defined as: "All full-time and regular part-time automobile technicians and lube technicians employed [at the Employer's Pembroke Pines location], excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act." It is clear from the record that the Employer uses the title "service technician" instead of "automobile technician," and "service technician trainee" instead of "lube technician." I will call the service technician trainee simply "trainee" for convenience.

warranty clerks, parts employees, the service courtesy driver, and the porter.

The unit sought by the Union has roughly 30 employees,⁵ including 4 team leaders; the Employer's unit has roughly 45 employees.⁶ The Employer refers to the department containing all positions in dispute, including those that the Union seeks to represent, as the fixed operations department.⁷

A hearing officer of the Board conducted a hearing, and both parties submitted briefs. I have considered the evidence and arguments presented by the parties. The main issue before me is whether the positions that the Union seeks to represent comprise an appropriate craft unit within the meaning of Section 9(b) of the Act. As explained below, I conclude that the unit that the Union seeks to represent is an appropriate craft unit, and that the positions in this unit share a community of interest separate from those that the Employer seeks to add. Accordingly, I shall direct an election in the petitioned-for unit.

After setting forth the relevant facts regarding the petitioned-for positions and those that the Employer seeks to add to the unit, I shall apply the controlling Board principles.

FACTS

1. Supervisory Structure

The service manager, Charles Thompson, supervises the service advisors, warranty clerks, and the service courtesy driver. The shop manager (also known as the shop foreman), Greg Kline, directly supervises the service

⁵ It appears from the record that, at the time of the hearing, the trainee position was vacant.

⁶ There are six service advisors, two bookers, two warranty clerks, three parts employees, one service courtesy driver, and one porter.

⁷ It appears from the record that departments not in fixed operations include sales, pre-owned (used) cars, and finance and insurance.

technicians. The service manager testified that he and the shop manager share direct supervision of the bookers and the porter. The parts manager, Mark Sturm, supervises the parts employees, with the assistance of the assistant parts manager, Hector Mahjong.⁸

The service manager participates in interviewing all applicants for fixed operations positions, and he effectively recommends hiring regarding all fixed operations positions. The service manager must also approve all leave requests.⁹

2. Organization of Fixed Operations

The Employer's facility contains a showroom, service drive, service write-up and service waiting areas, parts area, service shop, (which contains service bays), tool room, storage room, employee lounge, carwash and an area for detailing.¹⁰ The service technicians (hereinafter called "technicians"), team leaders and trainees work primarily in the service bays. Service advisors work mainly in the service write-up area. Offices are located in several locations. Warranty clerks work in an office in the service write-up area. Bookers work in an office next to the employee lounge, adjacent to the service shop. It appears

⁸ The parties stipulated, and I find based upon the record as a whole, that the parts manager and assistant parts manager have the authority to hire, fire and discipline, or to effectively recommend hiring, firing or discipline, and are supervisors within the meaning of Section 2(11) of the Act.

⁹ Although the parties agree that the service manager and shop manager are supervisors within the meaning of Section 2(11) of the Act, the record only contains a stipulation to this effect concerning the shop manager. The service manager and shop manager both have the authority to discipline or effectively recommend discipline, and the service manager has authority to hire or effectively recommend hiring. I find, based upon the record as a whole, that the service manager and shop manager are statutory supervisors.

¹⁰ The car wash and detail areas are staffed by a subcontractor. Neither party seeks to include these employees.

from the record that the shop manager's office is next to the office where the bookers work.

A customer needing service leaves her vehicle in the service drive and explains her problem to a service advisor, who writes up a repair order.¹¹ The service advisor also walks around the vehicle performing a visual inspection, checking for scratches or dents, measuring tire pressure and tread, and looking underneath the hood. The service advisor documents any additional problems on a service sheet for internal use, and recommends additional service or maintenance as appropriate. The walk-around inspection is intended, in part, to generate sales of additional products and services. The customer orders any further parts or services, and signs the repair order. The customer can wait while her vehicle is serviced, arrange her own transportation, rent a car from the Employer, or ride the Employer's shuttle to her destination. A valet employed by a subcontractor¹² drives the vehicle to the parking lot.

Once the repair order has been signed, the service advisor carries a hard copy to his team leader in the shop area.¹³ Team leaders perform many of the same repair and maintenance tasks as technicians, but also distribute work assignments to the technicians on their respective teams.¹⁴ There are four team

¹¹ Each repair order contains the name of the service advisor who prepares it.

¹² Neither party contends that the valets belong in the unit.

¹³ The shop is roughly 30 to 40 feet from the service write-up area.

¹⁴ The service manager testified that team leaders spend about 80 to 90 per cent of their time performing repairs and about 10 to 20 per cent monitoring and assisting members of the team. It appears from the record that the shop manager assigns jobs to teams based on the nature of the job and the skills of the team. It further appears that team leaders organize the order in which tasks are to be performed by technicians and assist them with those tasks, rather than assigning technicians to different tasks based on the technician's skill and experience. Neither party contends that team leaders exercise supervisory authority, and the record does not support such a conclusion.

leaders and six service advisors; the Employer assigns one service advisor to each team leader, and designates one service advisor as a floater,¹⁵ and the remaining service advisor as an “internal service advisor.”¹⁶ The record reflects that technicians, team leaders and trainees are the only employees who regularly repair vehicles.¹⁷

The service manager testified that he prefers to have a service advisor personally hand each repair order to a team leader, and interact in person with technicians who will be servicing that vehicle, rather than e-mail the repair order.¹⁸ The service manager testified that service advisors sometimes enter the shop, interacting with technicians and team leaders, and that they also interact with bookers and parts employees. The service manager did not testify as to how frequently these interactions occur, or provide specific examples of their content.¹⁹ The service manager also testified that service advisors occasionally call team leaders and technicians into the service write-up area to consult directly with the customer about problems, such as a noise a vehicle is making, but the record does not indicate the frequency of such consultations or other examples of their content.

¹⁵ The floater works on different teams as needed, and substitutes for absent service advisors.

¹⁶ It appears from the record that the internal service advisor mainly prepares new and used vehicles for sale.

¹⁷ The service manager testified that he has observed service advisors change oil and headlights, repair consoles, and perform various other minor repairs inside the shop. He did not indicate how frequently he has seen this. A technician who has worked for the Employer for two and one-half years testified that he has never seen fixed operations employees other than technicians repairing vehicles.

¹⁸ The service manager testified that this procedure enables the Employer to better meet customer needs in a timely manner.

¹⁹ He testified that service advisors go in and out of the service shop “all day long,” and characterized the service functions as “a total one-piece operation.”

Once a technician has been assigned to the repair, that technician drives the vehicle to the shop, placing it on a lift in one of the service bays. The technician performs a 27-point inspection of the vehicle, inspecting the brakes, struts, shock absorbers, exhaust system, filters, etc.²⁰ The service advisor then asks the customer if she wants any additional services indicated in the 27-point inspection. If so, these are reflected on the repair order.

Repair orders contain line items reflecting the different tasks to be performed, and the technician who is to perform the tasks.²¹ As the technician completes each line item, he makes a computer entry describing the customer complaint,²² its cause and the corrective action taken.²³ This information is electronically transferred to one of the bookers, who accounts for the time spent on each line item according to the manufacturer's guidelines for the number of hours allotted to that task. If the repair is under warranty, the technician is paid his hourly rate for the number of hours allotted to the repair. If the customer is to pay for the repair, the booker records the actual hours spent on the job by the technician, who is paid for actual time worked.

Bookers and technicians often confer regarding how to account for particular repairs.²⁴ Technicians also ask bookers for the authorization codes to repair certified pre-owned vehicles, and bookers ask technicians to rephrase line

²⁰ The service manager testified that this is another "sales tool" for the fixed operations department.

²¹ It is not clear from the record whether the same service technician performs all tasks on a given vehicle.

²² The repair order also exists as an electronic form in the Employer's system, where it can be accessed by all fixed operations employees.

²³ The Employer refers to this as its "concern, cause, and correction" format.

²⁴ It appears from the record that these consultations take place both in-person and electronically.

items so that the Employer can obtain additional reimbursement from the manufacturer.

3. Positions in the Unit that the Union Seeks to Represent

The record includes the “AutoNation Retail Position Description”²⁵ for certain positions, each bearing an effective date of August 1, 2007 (the job descriptions). What follows are relevant highlights from these job descriptions.²⁶

The trainee performs work as outlined in the repair order under the guidance of the team leader, and communicates regularly with the service manager and team leader to confirm repair order and diagnostic information. The trainee’s job description states that the trainee “should be a graduate of mechanical vocational trade school.”

The technician performs work as outlined on the repair order with efficiency and accuracy in accordance with dealership and factory standards; documents work performed on each vehicle on the repair order using the concern, cause and correction format; communicates with the parts department to obtain needed parts; diagnoses the cause of any malfunction and performs repair, if authorized by the customer; examines the vehicle to determine if additional safety or service work is required; continually monitors the status of each vehicle and informs the team leader; advises the team leader if there will be

²⁵ The Employer is a subsidiary of AutoNation, Inc.

²⁶ Although it appears that some employees may not have seen copies of their job descriptions, and that the list of “job responsibilities” in each job description may be over-inclusive or under-inclusive, it also appears that supervisors use them as a guide, and that they are generally accurate.

a problem meeting promised time [for repairs] as soon as it becomes apparent; and complies with other job responsibilities. According to his job description, the technician must have general mechanical skills; preferred qualifications include three or more years of experience as a service technician and ASE certification.²⁷

Both the trainee and service technician job descriptions state that these employees must be able to exert 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects, and that they must either walk or stand to a significant degree, or push and/or pull arm or leg controls, or work at a production rate pace while pushing and/or pulling materials.²⁸ The service manager testified that technicians use tools valued at thousands of dollars, unlike service advisors. One technician testified that he owns and uses \$20,000 worth of tools.

Technicians are paid an hourly wage using a “flat rate system.” The number of hours for which a technician is paid is based upon the manufacturer’s time guide; the manufacturer allots different units of time for different tasks, such as diagnostic tests or repairs. For example, if a technician performs tasks allotted three hours by the manufacturer, the technician is paid for three hours, regardless of whether he completes those tasks in a shorter or longer period of time.²⁹ Team leaders are paid the same flat rate as technicians, plus an “override” based on the number of hours for which their individual team members are credited.³⁰ Team leaders can generate additional income for each team

²⁷ ASE refers to the National Institute for Automotive Service Excellence.

²⁸ There is not a separate job description for team leaders.

²⁹ The record does not reflect actual earnings for any fixed operations employees.

³⁰ The override was \$1.75 per hour for team leaders at the time of the hearing.

member by suggesting additional repairs.³¹

4. Positions that the Employer Claims Must Also Be Included

The service advisor is required to greet each customer in a prompt, courteous manner and let customers who are waiting in line know that they will be helped soon; communicate with customers to determine the nature of the mechanical problem(s) as well as the value [sic] of maintaining their vehicles in accordance with manufacturers' specifications, using maintenance menus; schedule appointments using dealership-approved forms; conduct a walk around inspection of all vehicles, building a positive vehicle report, identifying body damage, notifying the customer if work is needed and providing an estimate of Body Shop work; and comply with other responsibilities. The service advisor's job description states that the service advisor must have demonstrated customer service skills. Preferred qualifications include two positions in a retail position, sales experience, and ASE certification. The service advisor uses basic tools, such as screwdrivers and pliers. The parties stipulated that technicians own and use more personal tools than service advisors.

The service advisor is paid solely on commission. He receives a percentage of the gross profits generated by sales of labor and parts. The percentages vary depending on whether the service work is under warranty. The

³¹ There are two alignment technicians, who perform alignments, balance tire and wheels and replace wheels. The record does not include a job description for alignment technician. The service manager testified that there are two employees in this position. It appears from the record that the Union seeks to include the alignment technicians. The record does not reflect who supervises them, or whether they are paid according to the flat rate method. The roster of job titles does not mention them, and thus they may be service technicians who simply ordinarily perform alignments.

service advisor receives a commission even if the technician, not the service advisor, detects the need for a repair or part.³² Because his compensation is based on profits, the service advisor benefits from additional work generated by team leaders and technicians (that is, work not contained in the initial repair order).

The booker closes repair orders when repairs are complete; posts edits using appropriate software and processes; processes all claims by next business day following the repair order close date; resolves and processes all charge-backs and claim corrections daily; performs the duties of cashier as required;³³ and performs various other responsibilities. According to the job description, the booker must have demonstrated customer service skills. Knowledge of automotive parts and two years of experience in a general office position are preferred.³⁴

The warranty clerk³⁵ performs the same duties listed above for the booker, and also establishes and maintains relationships with the manufacturer's designated warranty representative; reviews every warranty repair order written for proper completion, accuracy and legibility according to the policies and procedures manual;³⁶ and performs various other duties. The job description for the warranty clerk states that the warranty clerk must have the ability to confront and resolve difficult customer service situations, demonstrated computer skills,

³² The service manager testified that in these situations, the service advisor is "the one selling the work," while the technician only recommends the sale.

³³ Neither party contends that cashiers belong in the unit.

³⁴ This position does not apparently require a high school diploma or its equivalent.

³⁵ The job description is for "warranty administrator." This appears to be the same position as warranty clerk.

³⁶ This manual is not in the record.

and general knowledge of automotive parts and vehicle mechanical operations.

Two years of experience in a general dealership office position are preferred.

Bookers and warranty clerks have their own offices.

The service courtesy driver shuttles customers to and from the facility during business hours, using one of the Employer's vans. He also makes bank runs for the accounting office, and purchases supplies and parts as needed. The service courtesy driver is responsible for oil changes and basic maintenance for the van. The porter cleans the inside and exterior of the facility, empties trash, sweeps up, drains oil and coolant containers, and performs other duties as assigned. Neither the service courtesy driver nor the porter performs repairs or maintenance on vehicles. Neither position requires a high school diploma or its equivalent.

The job descriptions for service advisor, booker, warranty clerk, porter and service courtesy driver do not contain exertion requirements as specified in the job description for technician and trainee. The job descriptions for booker and warranty clerk, unlike those of other positions that the Employer seeks to add, require prolonged periods of personal computer use and data entry.³⁷

Warranty clerks, the service courtesy driver and the porter are paid hourly, based solely upon the number of hours they actually work.³⁸ Bookers receive a commission based upon the number of hours of "flag time," which appears to be the number of hours that technicians work for which the Employer is

³⁷ The record does not reflect the duties performed by parts employees, or their qualifications and skills.

³⁸ The record does not reflect their hourly rates.

reimbursed.³⁹ Parts employees are paid on both a commission and salary basis.⁴⁰

5. Benefits and Other Terms and Conditions in Fixed Operations

All employees in fixed operations receive the same benefits and are governed by the same handbook. All applicants for fixed operations complete the same application and, if hired, attend the same orientation. All fixed operations employees use the same employee lounge,⁴¹ lockers and parking lot. The Employer reimburses fixed operations employees for the purchase and maintenance of uniforms. It appears from the record that all positions in fixed operations except the warranty clerk are required to wear uniforms,⁴² and that the uniforms vary with the position (except that team leaders and service technicians wear the same type of uniform).

The service manager holds meetings twice each week with all service advisors to discuss overall production goals, and once per month with all technicians. The technician meetings take place during lunch.⁴³ The service manager uses them to conduct training, discuss any new policies and procedures, review new tools, etc. Other employees occasionally attend, though the record does not reflect which other employees, or how often they attend.

³⁹ It appears from the record that the booker's compensation is not based directly on the profits generated by hours sold, unlike the service advisor.

⁴⁰ The record does not reflect how their commission is computed.

⁴¹ The lounge contains vending machines, coffee and a refrigerator. The record does not reflect how frequently employees eat lunch there.

⁴² The service manager testified that bookers occasionally wear street clothes because they are not generally in direct contact with customers.

⁴³ It appears from the record that team leaders and trainees attend these meetings.

The Employer's facility is open from 7:00 a.m. to 7:00 p.m., Monday through Saturday.⁴⁴ Two technicians work from 6:00 a.m. to about 3:30 p.m., another starts at about 7:00 a.m., and the remaining technicians work from 8:00 a.m. until about 5:30 p.m. Service advisors usually begin work at 7:00 a.m.⁴⁵ The porter starts work at 6:30 a.m. The service courtesy driver starts at 6:45 a.m. Bookers start at 8:00 a.m. The warranty clerks start at 9:00 a.m. Fixed operations employees usually take lunch between noon and 1:00 p.m.

There is no traditional timeclock. Employees register that they are starting work by logging onto the Employer's computer. The service manager testified that employees can do so on any computer in the facility, although service advisors generally use the computers at their individual work stations. A technician testified that technicians only log in and out on the computer in the service shop, and that he cannot use one of the computers used by service advisors or employees in other areas because he has never been trained to do so and does not know the proper passwords.

All fixed operations positions apparently are certified at the "basic" level by Mercedes-Benz.⁴⁶ The technician who testified at the hearing stated that he has taken 20 training courses, including 10 since he began working at the facility involved herein, and that he is Star certified and Master certified by Mercedes-Benz, although these certifications are not required by the Employer. He testified

⁴⁴ The service department is closed on Sunday.

⁴⁵ The record does not reflect when service advisors stop working, except that one service advisor must remain until 7:00 p.m., on a rotating basis.

⁴⁶ The service manager testified that Mercedes-Benz requires that at least a certain percentage of employees per dealership receive basic certification.

that Master certification, the highest level of certification, requires roughly 10 years as a full-time Mercedes-Benz technician.

As mentioned, the AutoNation job descriptions for service technician and service advisor each state that ASE certification is “preferred.” The service manager testified that employees who obtain ASE certification are eligible for additional compensation: an additional \$.25 per hour per ASE certification,⁴⁷ and a further \$1 per hour for Level One training.⁴⁸ He testified that the majority of current technicians lack ASE certification.⁴⁹ Technicians are required to be licensed by Broward County, Florida⁵⁰ as automotive service technicians, while none of the other fixed operations positions requires this.

The Employer pays fixed operations employees for time spent taking on-line training provided by Mercedes-Benz;⁵¹ the service manager testified that employees can take such training at any time as long as business needs permit.⁵² The Employer also pays employees to attend hands-on training classes required by Mercedes-Benz, although the record does not indicate their frequency. It appears from the record that the hands-on training is mainly for technicians and sales employees. Mercedes-Benz also requires all fixed operations employees to complete periodic training on new vehicle models.

⁴⁷ There are eight ASE certification levels, so the maximum additional amount a technician can earn from ASE certifications is \$2 per hour.

⁴⁸ The service manager also testified that employees can receive “award points” from Mercedes-Benz for additional certifications. Award points can be “traded in” to Mercedes-Benz in exchange for various awards, such as trips to Germany.

⁴⁹ He further testified that no current service advisors have ASE certification, to his knowledge.

⁵⁰ The Employer is located in Broward County.

⁵¹ This training can also be done from home by employees.

⁵² A technician testified that the Employer only permits employees who are at work to take on-line training before and after work and during lunch.

6. Interchange

The service manager testified that the technician lacks the interpersonal and sales skills to work as service advisor. He testified that technicians have worked on a temporary basis as booker, warranty clerk, and in parts, but that this has been a rare occurrence.⁵³ There is no evidence that technicians have worked as porter or service courtesy driver. The service manager testified that a booker substituted for a warranty administrator who was out sick, though the record does not reflect how many days this lasted. There is no other evidence of temporary interchange.

The service manager testified that some trainees have become service technicians, though he did not indicate how many have done so, or over what period of time. The service manager testified that some trainees had been porters before becoming trainees, although he did not specify when this occurred, or how many current trainees have held porter positions. It appears from the record that there has been no other permanent interchange between fixed operations positions,⁵⁴ although one current booker had been a service advisor for the Employer, then left the Employer and later reapplied for the booker position.

7. Bargaining History

The parties have no history of collective bargaining. The Employer submitted the unit descriptions from four collective-bargaining agreements

⁵³ It appears from the record that the service manager may have been referring to another facility, not the Employer's, when testifying about a technician working temporarily as a booker and in parts.

⁵⁴ Three current service advisors worked as technicians for other employers.

between affiliates of the International Association of Machinists & Aerospace Workers, AFL-CIO, and individual dealerships in northern California owned by AutoNation, Inc. Each of the record agreements from northern California defines the unit to include the position of service advisor or service writer, which AutoNation uses interchangeably with service advisor. The record does not reflect whether these unit descriptions were the result of stipulated election agreements, voluntary recognition agreements, Regional Office or Board Decisions and Directions of Election, or other procedures, how service work is organized at the four locations, or anything about unit members' terms and conditions of employment. Two of the collective-bargaining agreements are in effect until some time in 2008; the record does not indicate the expiration dates for the other two.

ANALYSIS

1. Positions of the Parties

The Union argues that technicians, team leaders and trainees comprise a skilled craft unit. The Union maintains that these positions share distinct skills, training, and qualifications separate from the remaining positions in fixed operations. The Union also asserts that the positions it seeks to represent share a community of interest separate from other fixed operations positions.

The Employer contends that by seeking to include trainees, the Union expands the unit beyond a permissible craft unit. The Employer also argues that the positions it seeks to add do not have a separate community of interest from the technician, trainee and team leader, and must be included with them.

2. The Craft Unit

The Board defines a craft unit as:

[o]ne consisting of a distinct and homogeneous group of skilled journeymen and craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills, and specialized tools and equipment.⁵⁵

Where no bargaining history on a more comprehensive basis exists, a craft having a separate identity of skills, functions and supervision, exercising craft skills or having a craft nucleus, is appropriate. See MGM Mirage, d/b/a Mirage Casino-Hotel, 338 NLRB 529 (2002) (holding that a petitioned-for unit of carpenters and upholsterers comprised a craft unit that did not include the remaining employees in the engineering department).

In examining whether a petitioned-for craft unit is appropriate, the Board examines (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; and (5) whether the petitioned-for employees share common interests with other employees.⁵⁶

⁵⁵ Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994).

⁵⁶ Burns & Roe Services Corp., 313 NLRB at 1308.

Applying these factors, I conclude that the petitioned-for positions comprise an appropriate craft unit.⁵⁷ The work performed by technicians and team leaders requires special training. They supply and use different tools than excluded employees. Technicians are licensed by the County and are encouraged through various incentive systems to obtain additional certifications. The Employer assigns work to team leaders (and they in turn distribute assignments to technicians and trainees) based on the skills possessed by the team, rather than simply according to need. Unlike the excluded employees, technicians and team leaders are paid according to the flat rate system, and they are supervised separately by the shop manager. The duties of employees in the petitioned-for unit do not overlap substantially with those of excluded employees; while employees other than technicians, team leaders and trainees may occasionally perform minor repairs, such as changing oil and headlights, “some overlap in lesser-skilled duties does not destroy the appropriateness” of a separate craft unit.⁵⁸ Although there is some functional integration with the work of excluded employees, I find that this is outweighed by the remaining factors.

In Dodge City of Wauwatosa, Inc., 282 NLRB 459 (1986), the Board found that a petitioned-for unit of the employer’s mechanics comprised an appropriate craft unit, rejecting the employer’s contention that it was not a craft unit and that an appropriate unit must also include all employees in its service department,

⁵⁷ In non-construction industry cases, the Board does not limit its inquiry solely to these factors, but determines the appropriateness of the craft unit sought in light of all factors. Mirage Casino-Hotel, 338 NLRB at 532.

⁵⁸ Mirage-Casino Hotel, 338 NLRB at 533 (although casino engineers may perform low-skilled carpentry repair work, carpenters remain distinct and homogenous craft unit).

including parts employees and body shop employees.⁵⁹ The Board noted that the three sets of employees functioned in separate work areas under separate immediate supervision; that 15 of 16 mechanics were certified by ASE, while the only one who was not had passed the ASE exam but needed another year of experience to become certified; that one of the employer's two uncertified mechanics had been a mechanic for 34 years while the other had worked for 10-12 years as a line mechanic for Chrysler Plymouth garages; and that the employer's only trainee (apprentice) was training to become certified.⁶⁰ The Board also relied on the fact that mechanics worked almost exclusively in the service shop and had only limited contact with employees in parts and the body shop, such as attending a monthly master service technical meeting at which the employer reviewed recent developments in technology. The Board further emphasized that there had been only two transfers into, and one transfer out of the mechanic position in 13 years.⁶¹

In Dodge City of Wauwatosa, the Board did not consider it dispositive that the service manager possessed ultimate supervisory authority over all service department employees, or that less skilled body shop employees performed some mechanics' tasks in order to complete body repairs, such as removing power steering pumps and radiators. The Board found that the mechanics constituted a separate craft unit even though their method of compensation – the

⁵⁹ The Board stated that, "mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive ... department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees." Dodge City of Wauwatosa, Inc., 282 NLRB at 460 fn. 6; Fletcher Jones Chevrolet, 300 NLRB 875, 875 (1990).

⁶⁰ Dodge City of Wauwatosa, Inc., 282 NLRB at 459.

⁶¹ *Id.* at 459-460.

same type of flat rate system used by the Employer – was the same as that of body shop employees.⁶²

In Fletcher Jones Chevrolet, 300 NLRB 875 (1990), the employer's "fixed operations department" consisted of service, parts, the body shop and used cars. Each had a separate manager. The service department was further divided into five areas where service technicians worked. Eighty-five per cent of the service technicians were certified by either ASE or a vehicle manufacturer, and they all provided their own tools. Service technicians and body shop employees were paid according to the type of flat rate system used by the employer, while other positions in the service department were paid either an hourly wage or a base rate plus commission.⁶³ The Regional Director found that service technicians did not constitute a craft unit because the union had sought to include relatively untrained quick service technicians.⁶⁴

The Board reversed the Regional Director and found that a petitioned-for unit of service technicians was an appropriate craft unit, rejecting the employer's position that an appropriate unit must include all service department employees.⁶⁵ The Board noted that service technicians were paid differently than other employees and used different skills than other employees. The Board noted the absence of evidence of temporary interchange.⁶⁶ The Board stressed that the service technicians supplied their own tools, were paid according to a

⁶² Id. at 459-460.

⁶³ Id.

⁶⁴ Id. The Regional Director also included dispatchers (similar to the Employer's service advisors), warranty clerks, courtesy drivers, porters, cashiers and secretaries. Id.

⁶⁵ Id. at 877.

⁶⁶ Id. at 876-877.

different method than other fixed operations department employees, performed distinct job duties, and had limited contact with other service department employees.⁶⁷

Many of the factors supporting the Board's decisions in Dodge City of Wauwatosa and Fletcher Jones Chevrolet are also present here. As in both of these decisions, the service technicians possess unique skills, supply and use many more tools than other fixed operations employees, are paid according to a different method, are supervised separately from the positions that the Employer seeks to include, are separately licensed, and may receive additional certification and training not obtained by employees in the other positions that the Employer seeks to include. As with the mechanics in Dodge City of Wauwatosa, the service manager conducts monthly meetings for technicians.

The Board in Fletcher Jones Chevrolet reached its decision notwithstanding that there was evidence of daily work-related contact between service technicians and dispatchers (akin to service advisors) and warranty clerks, as there is here.⁶⁸ As in both Dodge City of Wauwatosa and Fletcher Jones Chevrolet, the duties performed by service technicians are integrated to an extent with those of other employees in fixed operations, as evidenced by the use of repair orders⁶⁹ by service advisors, technicians and team leaders, yet

⁶⁷ Id. at 876.

⁶⁸ Id. I note that there is little evidence of work-related contact between technicians and the porter, courtesy driver or parts employees, and that although technicians interact with service advisors, bookers and warranty clerks, there is no evidence as to the frequency and content of such contact, and the service manager's testimony regarding these interactions was vague and conclusory.

⁶⁹ The employer in Fletcher Jones Chevrolet used repair orders in virtually the identical fashion as the Employer uses them.

such integration is not sufficient to require that all fixed operations employees be included.⁷⁰

As with the Employer, the employer in Fletcher Jones Chevrolet argued that the Union's inclusion of less skilled employees precluded finding a distinct and homogenous craft unit. The Board noted that quick service technicians, though not as skilled as the remaining unit technicians, handled lubrication, oil and filter changes, belts, hoses, and other simple mechanical repair work. The Board also noted that the craft unit in Dodge City of Wauwatosa included employees with duties and skills similar to those of quick service technicians. The Board found that the quick service technicians should be included as "helpers or trainees."⁷¹ For the same reasons, I find that the Union's inclusion of trainees does not negate the existence of a craft unit.⁷² Accord Country Ford Trucks v. NLRB, 229 F.3d 1184 (D.C. Cir. 2000) (citing Fletcher Jones Chevrolet and Dodge City of Wauwatosa in finding appropriate a petitioned-for craft unit consisting of service technicians and lube workers, where the latter engaged in mechanical work alongside service technicians).⁷³

The Employer cites Austin Ford, 136 NLRB 1398 (1962), to support its position that the unit sought by the Union is not a distinct and homogenous

⁷⁰ The Board in Fletcher Jones Chevrolet rejected the employer's contention that all positions in dispute were so highly integrated and related to the single function of servicing and repairing vehicles as to require their inclusion in one unit. Id. at 876-877.

⁷¹ Id. The Board in Fletcher Jones Chevrolet also noted that, although the employer lacked a formal apprenticeship program, it provided training and classes for service technicians to maintain and upgrade their skills. Id. The same is true here.

⁷² I also note that, according to the trainee's job description, the Employer prefers trainees to have graduated from a mechanical vocational trade school, and his duties indicate that he is training to become a service technician.

⁷³ The D.C. Circuit further noted: "[w]hatever assistance or interaction the service technicians have with other employees, such as service advisors, the lube workers are the only employees in the service department that provide hands-on, manual assistance with repairs and service." Id. at 1190.

craft unit. In Austin Ford, the union sought to represent a unit of line mechanics, excluding other skilled mechanics. The service department was divided into four sub-departments, and the line mechanics worked primarily in the customer service sub-department. As the Board explained in Dodge City of Wauwatosa, the employer in Austin Ford temporarily shifted its various skilled mechanics between sub-departments as needed.⁷⁴ There is no evidence of such interchange here. Moreover, the employer in Austin Ford considered all service department employees when filling vacancies in the petitioned-for line mechanic position,⁷⁵ while there is no evidence that the Employer similarly considers other service department employees when it has vacancies for service mechanic or team leader. Also unlike in Austin Ford, the Employer does not employ skilled mechanics not included in the unit that the Union seeks to represent.

In sum, I conclude that the positions that the Union seeks to represent comprise an appropriate craft unit.⁷⁶

3. The Traditional Community of Interest Factors

Even if the positions in the petitioned-for unit do not comprise a craft unit, they may share a community of interest separate from those outside the unit, and thus constitute an appropriate unit.⁷⁷

In evaluating whether positions share a community of interest, the Board considers common supervision; similarity in employees' skills and functions; similarity in the scale and manner of determining earnings; similarity in benefits

⁷⁴ Dodge City of Wauwatosa, 282 NLRB at 460; see Austin Ford, 136 NLRB at 1399-1400.

⁷⁵ Austin Ford, 136 NLRB at 1399-1400.

⁷⁶ Fletcher Jones Chevrolet, 300 NLRB 875 (1990).

⁷⁷ As stated above, I find that the petitioned-for unit is an appropriate craft unit. But in view of the Employer's arguments, I am making a separate community of interest analysis as well.

and working conditions; contact among employees; degree of functional integration; interchange; geographical proximity; and the history of any collective bargaining involving the parties. See Kalamazoo Paper Box Co., 136 NLRB 134, 137 (1962); Turner Industries Group, LLC., 349 NLRB No. 42, 42 (2007). The unit sought in the petition need not be the most appropriate unit, as long as it is an appropriate unit. Dezcon, Inc., 295 NLRB 109, 111 (1989). Applying these factors, I find that the technicians, team leaders and trainees share a community of interest separate from the positions that the Employer seeks to add.

As explained above, technicians and team leaders have skills, training and qualifications not required for the positions that the Employer seeks to include. They must be licensed by Broward County, Florida as automotive service technicians. At least three years of experience as an automotive technician and ASE certification are preferred, and additional Mercedes-Benz certifications, beyond the basic level, are encouraged.

Technicians, team leaders and trainees are supervised separately from other fixed operations employees. Although the service manager retains some supervisory authority over all fixed operations positions, it appears that he directly supervises only the service advisors, warranty clerks and courtesy driver, and that the shop manager directly supervises the petitioned-for positions, effectively recommends discipline for them, and assigns and responsibly directs their work.⁷⁸

⁷⁸ See Mirage-Casino Hotel, 338 NLRB at 533 (finding that petitioned-for carpentry and upholstery positions, who shared common high level supervisors with remaining positions in engineering department, nonetheless comprised an appropriate unit because their crew leaders assigned their work and performed certain other supervisory functions solely for them).

Technicians and team leaders are also compensated differently than employees in the positions that the Employer seeks to include. Whereas technicians and team leaders are compensated according to the flat rate system, service advisors receive a percentage of the gross profits generated by the sales of parts and labor. Warranty clerks, the booker and the courtesy driver are paid an hourly wage. Parts employees are paid a commission and a salary. Bookers are paid a commission.

Technicians, team leaders and trainees work in the service shop and experience physical working conditions, such as exertion requirements, unlike those of the positions that the Employer seeks to add. They do not have to use computers for prolonged periods, unlike the booker and warranty clerk. Also, given that customers place repair orders in the service write-up area, it is likely less noisy than the shop.

There has been little permanent interchange between the positions that the Union seeks to represent and the remaining fixed operations positions. Significantly, the service manager testified that technicians lack the interpersonal and sales skills to work as service advisor, and while the service advisor's job description requires customer service skills, the technician's job description does not. The only evidence of temporary interchange is the service manager's testimony that technicians have rarely worked as booker, warranty clerk or in parts, but the service manager furnished no specific facts as to when this occurred, and he appeared to be referring to a facility other than the Employer's.

The Board considers temporary interchange more important than permanent in evaluating community of interest factors.⁷⁹

With respect to work location, the various fixed operations positions each have separate work spaces. Service advisors work mainly in the service write-up area. Technicians, trainees and team leaders work mainly in the service shop, about 30 to 40 feet away. Bookers and warranty clerks work in offices adjacent to the shop and the service drive.⁸⁰ In short, the work locations do not negate the separate community of interest shared by the positions that the Union seeks to represent.

The Employer seeks to distinguish Board cases finding a unit of automobile mechanics appropriate, by arguing that car dealerships function differently than 20 years ago because of computerization. The Employer contends that all of the fixed operations positions track the same repair orders, and that all of the Employer's service work is so functionally integrated as to require the inclusion of the disputed positions.

To begin with, as stated above, the Board considers functional integration as only one factor in the community of interest analysis. Further, while technicians appear to occasionally interact with service advisors, bookers and warranty clerks in performing their duties, the record does not establish the frequency or to any great extent the nature of these interactions. Assuming that these interactions occur, it appears that they are "peripheral to the regular repair

⁷⁹ Mirage-Casino Hotel, 338 NLRB at 534; Ore-Ida Foods, Inc., 313 NLRB 1016, 1021 fn 4 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995).

⁸⁰ It appears from the record that the porter and courtesy driver work throughout the facility.

work” performed by technicians and team leaders.⁸¹ The Board has found similar interactions insufficient to negate the appropriateness of a separate unit.⁸² The Employer’s reliance on Airco, Inc., 273 NLRB 348 (1984), where the petitioner sought a plantwide unit including mechanics, and the employer did not dispute the inclusion of mechanics, is likewise misplaced. The Board in that case relied primarily on the presumptive appropriateness of a plantwide unit. The fact that a plantwide unit is appropriate does not mean that other, smaller units are inappropriate. Indeed, the Act specifically lists a craft unit as another example of an appropriate unit.

Finally, I assign little weight to the fact that units combining service advisors and technicians have been recognized by four car dealerships in California. The record contains no evidence as to how these units were established, or the extent to which the positions involved are similar to those discussed above.⁸³

Based upon the foregoing, and the record as a whole, I find that a unit consisting of the Employer’s technicians, trainees and team leaders, is

⁸¹ Capri Sun, 330 NLRB 1124, 1126 (2000) (reversing Regional Director and finding petitioned-for maintenance unit appropriate despite contact with, and occasional assistance provided by, production employees); see also Ore-Ida Foods, 313 NLRB at 1019-1020 (although petitioned-for unit of maintenance employees had extensive contact with and, at times, assistance from production employees, the employer’s operations were not so highly integrated as to require inclusion of production employees).

⁸² Yuenling Brewing Co. of Tampa, 333 NLRB 892, 893 (2001) (reversing Regional Director and finding petitioned-for maintenance unit appropriate despite regular contact with production workers outside the unit); Ore-Ida Foods, 313 NLRB at 1020.

⁸³ I further note that Section 9(b) of the Act allows a separate craft unit even in the face of a prior Board determination establishing a different unit.

appropriate for collective bargaining.⁸⁴

Conclusions and Findings

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

C. The Union claims to represent certain employees of the Employer.

D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act.

E. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians, team leaders and service technician trainees, employed by the Employer at its facility located at 14199 Pines Boulevard, Pembroke Lines, Florida, 33027, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.⁸⁵

⁸⁴ One technician on the largest team, Vinny Venegas, works as both an assistant team leader and trainer. He spends 90 per cent of his time working on vehicles like other technicians. He also assists inexperienced technicians on the team who have questions, as by showing them how to use workshop information systems. Venegas receives a lower hourly override than other team leaders, whom the parties stipulate belong in the unit. The Union contends that Venegas is a supervisor. However, he has no authority to hire, discipline or promote employees, or perform any of the other supervisory functions set forth in Section 2(11). The party seeking to exclude a position as supervisory has the burden of proof. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001). I find, based upon the record as a whole, the Venegas is not a supervisor.

⁸⁵ To the extent that any employees are classified as "alignment technicians," they may vote subject to challenge.

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in military service of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or have been discharged for cause since the designated payroll period; (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and (3) employees

engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all eligible voters. North Macon Health Care Facilities, 315 NLRB 359 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before **January 16, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting

aside the election whenever proper objections are filed. Since the lists will be made available to all parties to the election, please furnish two copies of the list.⁸⁶

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the elections are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the Election Notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the Election Notice.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on January 23, 2008**. The request may not be filed by facsimile, but may be filed electronically.⁸⁷

⁸⁶ The lists may be submitted by facsimile transmission to (813) 228-2874, or electronically, as well as by hard copy. See www.nlr.gov for instructions about electronic filing. Only one copy of the list should be submitted if it is sent electronically or by facsimile.

⁸⁷ See www.nlr.gov for instructions about electronic filing.

DATED at Tampa, Florida this 9th day of January, 2008.

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, Florida 33602